

# MILLIONS FOR POLICY HOLDERS

Mutual Life Insurance Companies Must Divide Surplus Earnings.

## CONTRACTS CALL FOR IT

Judge Woodward, of New York Appellate Court, Renders a Decision Which, if Sustained, Will Compel Three Big Insurance Companies to Distribute Enormous Surplus Among the Policy Holders of These Companies.

The New York Herald says: If the Court of Appeals sustains a decision handed down by Judge Woodward, in the Appellate Division of the Second Department yesterday, changes amounting almost to a revolution in the conduct of life insurance business in this State will result.

If this decision stands, persons holding endowment policies in New York companies will derive much larger benefits from their policies than they had reason to expect, as each policy holder's share of the annual profits of the company in which he is insured will be based on the total surplus of the company, instead of on a stated portion of that surplus.

Judge Woodward in his decision takes the ground that directors of life insurance companies have no right to use discretion in dealing with a company's surplus. He holds that the directors cannot legally set aside a certain portion of the income as a basis upon which the earnings of policies shall be estimated.

He makes it clear that such earnings must be based upon the total surplus of the company. In his decision Judge Woodward is upheld by Judge Cullen and Judge Hatch. Judge Goodrich dissents, he holding that directors of insurance companies have the right to exercise discretion in the matter.

Judge Woodward's decision was in the case of Emil Greif, against the Equitable Life Assurance Society. Greif took out a policy in that company in 1882. The policy was what is known as an endowment policy, to mature in fifteen years. It matured in May, 1897. The charter of the company provides that its business shall be conducted on the mutual plan, and that each policy holder shall be entitled to an equitable share of the surplus.

### JUDGE WOODWARD'S DECISION.

After reciting these facts Judge Woodward says: "It is conceded that the plaintiff stands in a contract relation to the defendant, and that the defendant has stipulated in its contract that the plaintiff, during the continuance of the policy, shall be entitled to participate in the distribution of the surplus of this society, but it is urged on behalf of the defendant that the plaintiff has forfeited his right to insist upon an equitable distribution of all of the surplus by the provision in the policy that the distribution shall be made according to such principles and methods as may from time to time be adopted by this society for such distribution, which principles and methods are hereby ratified and accepted."

### NO DIVISION AGREED UPON.

"The learned trial court has adopted this view of the question, but we are unable to concur in the conclusion that the minds of the parties ever met in an agreement that the defendant should have the arbitrary power in distributing this surplus of the society to take out two-thirds of the surplus and to divide the remainder. The contract was drawn by the defendant, and is therefore to be construed most favorably to the plaintiff, where this construction does no violence to the letter of the contract."

"It is not within reason to suppose that the plaintiff, who was paying \$1,457 per year for this insurance, with the inducement held out to him that he was to participate in the distribution of the surplus of the society, had any other idea than that he was to participate in the distribution of all of the surplus declared by the defendant, and the waiver or ratification which the defendant has inserted in its policies cannot be understood to go to the question of determining what portion of the surplus the society will distribute, but to the principles and methods of distributing the surplus when it has been determined."

"The charter of the company, which is made a public record by the provisions of the statute under which it is organized, may properly be appealed to, at least for the purpose of aiding us in the proper construction to put upon the agreements contained in the policy, and in this it is provided that the officers of the company shall 'cause a balance to be struck of the affairs of the company, which shall exhibit its assets and liabilities, both present and contingent, and also the net surplus, after deducting a sufficient amount to cover all outstanding risks and other obligations. Each policy holder shall be credited with an equitable share of the said surplus.'"

### TERMS ON WHICH IT TOOK PREMIUMS.

"The affairs of the company were to be conducted upon the mutual plan; the stockholders were limited by law to semi-annual dividends of three and one-half per cent., and each policy holder was to be credited with an equitable share of the profits of the company after the deduction of an amount sufficient to meet all of the obligations of the company. This was the understanding which the company had of its duties and obligations in accepting premiums."

"It is in effect stipulated with the State as a condition of its being that it would place in the hands of its policy holders a contract embracing these provisions, and it cannot now be heard to say that it has, by a mere jugglery of words, kept this promise in form only to defeat it in substance. The substance of the contract, as set forth in the policy, construed with the charter, is that the plaintiff shall be entitled to an equitable share of the said surplus."

"If a grocer entered into a contract with his customers to give them an equitable share of the profits of his business, after deducting enough to pay all of his outstanding or contingent obligations, with seven per cent. interest, no one would contend that he was fulfilling that contract if he put

two-thirds of the net profits into a fund for his own use and then divided the remainder. There would be nothing equitable about that, and there is nothing equitable about the plan of apportioning the net surplus of the defendant.

"The contract is that 'This policy, during its continuance, shall be entitled to participate in the distribution of the surplus of this society.'"

"It is not a part of the surplus, but 'the surplus,' in which the policy is to share."

Judge Woodward says it is not disputed that the society has a large discretion in determining the amount of the surplus, that it may largely increase its reserve fund for the security of its policy holders, or that it may make deductions to cover contingent liabilities.

### RIGHTS OF PROTECTION.

"The company," he holds, "may take all steps which are demanded by a wise and prudent management to insure the prompt payment of losses and to successfully carry on the business. But when it has once determined what the surplus is, it must, under its contract with this plaintiff, make an equitable distribution, not of a portion of the fund, but of all of it. That is the essence of a mutual insurance contract."

"This company, organized in 1853 with a capital of \$100,000, has a surplus of over \$45,000,000. If this surplus is not to be divided among those who have paid the premiums, but is to go eventually to the stockholders, the institution is built upon a false pretence, for it has held out to its policy holders the promise that this fund should be distributed among them, and it has avoided its taxes to the State upon the proposition that the fund was held 'for the

exclusive benefit of the assured.'" Judge Woodward concludes: "The pleadings clearly indicate that the defendant owes the plaintiff an amount equal to that which is claimed, and if it does not the matter may be determined upon the trial of the action. Conceding the facts stated in the pleadings, the plaintiff is entitled to judgment, and we conclude, therefore, that the judgment of the court below should be reversed and the demurrer overruled, with costs."

Judge Woodward in this decision overrules a decision handed down by former Judge Joseph F. Daly, who ruled against Greif when the case first came before the Supreme Court.

### The Americans as Fighters.

That Americans know how to fight they have already proved several times. They have always fought right and for right, that's the reason. America is like her famous household remedy—Hostetter's Stomach Bitters. Neither has ever been conquered or ever will. For half a century this great remedy has been restoring strength to weak stomachs, vigor to tired nerves, and health and strength to the whole body. It's reputation has steadily advanced in spite of hundreds of imitations. So long as Hostetter's Stomach Bitters live to cure it. If you are troubled with constipation, if your food lies heavy after eating, if you are sorrow from biliousness, or if your kidneys have been overworked, try Hostetter's Stomach Bitters. It will cure you, if you are well take it occasionally to keep you so.

### Eyes Examined Free.

Dr. A. Week, manager of the optical department of the Gate Jewelry Company, will examine your eyes free. Defective vision and complicated cases specially invited to call.

Time nor space will allow us to go into details. Suffice it to say, that you are paying too much money for your clothing. A word to the wise should be sufficient.

**HERE, ONLY A FEW SPECIALS.**

<p><b>MEN'S SUITS, ACTUAL VALUE NINE DOLLARS, YOURS FOR</b></p> <p style="font-size: 2em; text-align: center;"><b>\$4.98</b></p> <p>MUST BE SEEN TO BE APPRECIATED.</p> <p><b>MEN'S SUITS, ACTUAL VALUE FOURTEEN DOLLARS, YOURS FOR</b></p> <p style="font-size: 2em; text-align: center;"><b>\$7.42</b></p> <p>MUST BE SEEN TO BE APPRECIATED.</p>	<p><b>MEN'S SUITS, ACTUAL VALUE TWELVE DOLLARS AND FIFTY CENTS, YOURS FOR</b></p> <p style="font-size: 2em; text-align: center;"><b>\$6.24</b></p> <p>MUST BE SEEN TO BE APPRECIATED.</p> <p><b>MEN'S SUITS, ACTUAL VALUE TWENTY DOLLARS, YOURS FOR</b></p> <p style="font-size: 2em; text-align: center;"><b>\$9.98</b></p> <p>MUST BE SEEN TO BE APPRECIATED.</p>
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**CANNON BALL CLOTHING CO.,**  
219 MAIN ST., Norfolk, Va., opposite Academy of Music.

**Ames Brownley & Hornthal,**  
THE MONTICELLO CORNER.

**SPECIAL. SPECIAL. SPECIAL.**

**MONDAY THE DAY.**

Not EQUAL values by any means, but the result of some special purchases of Summer Wearables. Profit on some of these articles, have been almost disregarded. The keen eye and judgment of Norfolk's great host of shoppers will observe this fact upon their inspection. LISTEN.

### LAWNS.

One case over 1,000 yards, choice of the season's production, smooth sheer texture and styles that would suggest the price to be low, they are only 10c.

### PIQUES.

Every one is interested in Piques. One lot, 24 inches wide, up and down cord, at 10c, per yard. Another line of Round Smooth Weave, 28 inches wide, you would count them cheap at 10c, they are only 12c, higher grades up to 50c, per yard.

SO. BELL 'PHONE NO. 437.  
SO. STATES 'PHONE NO. 325.

**EASTMAN'S KODAKS!**

We have a full supply of Eastman's goods and all chemicals and other goods for Amateur and Professional Photographers.

Kodaks, . \$5.00, \$10.00, \$22.00  
Vive Camera, . \$5.00 and up  
Gundlach Camera, . \$10.00, \$14.00  
And other makes.

Developing Solution, Toning Solution, Flash Powder, Printing Paper, Mounts, &c.

**Burrow, Martin & Co**  
296 MAIN ST.

**J. H. COFER**  
—SHIPPER OF—  
**Hay and Grain,**  
610 Citizens' Bank Building.  
Quick shipment and satisfaction guaranteed.

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Kodaks, . \$5.00, \$10.00, \$22.00  
Vive Camera, . \$5.00 and up  
Gundlach Camera, . \$10.00, \$14.00  
And other makes.

Developing Solution, Toning Solution, Flash Powder, Printing Paper, Mounts, &c.

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Between Norfolk and America's VIRGINIA BEACH, Ocean Resort.  
CURRITUCK DIVISION.  
With steamers forming the "EAST VIRGINIA AND CAROLINA LINE."

(Formerly Pettit's North Carolina Line and Bennett's North Carolina Line.)  
SCHEDULE IN EFFECT APRIL 29, 1899  
MAIN LINE—TO VIRGINIA BEACH

LEAVE NORFOLK, Daily except Sunday:  
6:45 a. m., mixed, stops only at Okeana, Lynnhaven and Okeana.

12:30 p. m., local express.  
3:45 p. m., local express.  
6:00 p. m., local express.

SUNDAY:  
10:15 a. m., fast express, stops only at Okeana, Lynnhaven and Okeana.

12:30 p. m., local express.  
3:45 p. m., local express.  
6:00 p. m., local express.

LEAVE VIRGINIA BEACH, Daily except Sunday:  
8:15 a. m., local express.

4:30 p. m., fast express, stops only at Okeana, Lynnhaven and Okeana.

SUNDAY:  
11:00 a. m., local express.  
2:00 p. m., local express.  
4:30 p. m., fast express, stops only at Okeana, Lynnhaven and Okeana.

7:35 p. m., local express.  
10:30 p. m., through express.

SUNDAY:  
11:00 a. m., local express.  
2:00 p. m., local express.  
4:30 p. m., fast express, stops only at Okeana, Lynnhaven and Okeana.

7:35 p. m., local express.  
CURRITUCK DIVISION.  
LEAVE NORFOLK, VA. Daily except Sunday—10:30 a. m., mixed; 5:00 p. m., local express.

LEAVE MUNDEN POINT, VA. Daily except Sunday—7:30 a. m., mixed; 2:00 p. m., local express.

All steamers other than Currituck Sound steamers, arrive and depart from Pier No. 1 (adjoining Clyde Line) Water street, Norfolk.

Trains stop only on signal at intermediate stations to take on or put off passengers.

W. P. ASHURBY, Gen. Frt. and Pass. Agt.  
B. P. HOLLAND, Superintendent.

**Norfolk and Ocean View Ry.**  
SHORT LINE BETWEEN NORFOLK AND OLD POINT COMFORT.  
Via Norfolk and Ocean View Ry. Co. FIFTY MINUTES.  
SCHEDULE TAKING EFFECT NOVEMBER 24th, 1898

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### TRAVELERS' GUIDE.

**Old Dominion Steamship Co.'s Lines**  
FOR NEW YORK.—Passenger ships are appointed to sail from Norfolk, Va., 10 p. m. daily, except Sunday, from New York—On Monday, Tuesday, Wednesday, Thursday, Friday and Saturday at 3:30 p. m., Saturdays at 4:00 p. m.

PASSENGER ACCOMMODATIONS UNSURPASSED.  
Fare, including meals and stateroom berth, \$3.00 Round trip (limit 20 days), \$5.00 For tickets and reservation of staterooms apply at ticket office, 193 Main street, or at general office, at wharf. Ships leave Old Point for Norfolk Sunday only, at 4 a. m.

TIME SCHEDULE OF STE